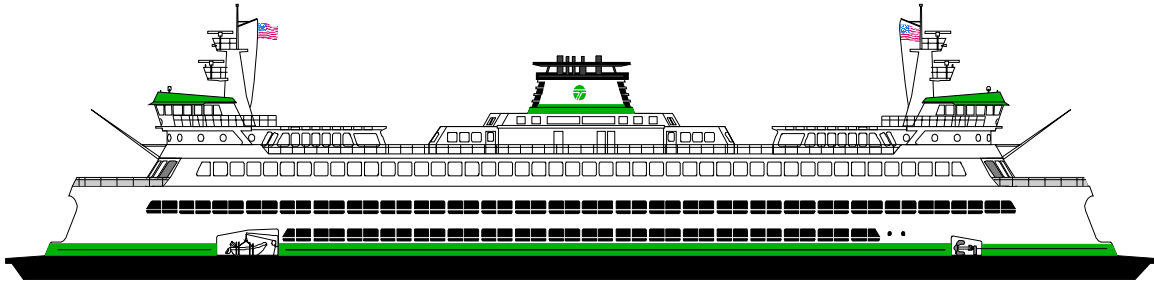


PART 10

CONTRACTS



WASHINGTON STATE FERRIES

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION

ON-BOARD FOOD, BEVERAGE AND RETAIL CONCESSION CONTRACT

JANUARY 2004

WASHINGTON STATE FERRIES

ON-BOARD FOOD, BEVERAGE AND RETAIL CONCESSION CONTRACT

JANUARY 2004

WASHINGTON STATE FERRIES
ON-BOARD FOOD, BEVERAGE AND RETAIL
CONCESSION CONTRACT

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WASHINGTON STATE FERRIES

ON-BOARD FOOD, BEVERAGE AND RETAIL CONCESSION CONTRACT

1 **THIS CONTRACT** is made and entered into this ____ day of _____,
2 2003, between **WASHINGTON STATE FERRIES**, a division of the Washington State
3 Department of Transportation (hereinafter called "**WSF**") and
4 _____, an independent contractor (hereinafter
5 called the "**CONCESSIONAIRE**").

6 7 **WITNESS THAT:**

8
9 **WHEREAS**, **WSF** owns and operates the largest ferry system in the United States,
10 including twenty-four (24) auto ferries and five (5) passenger-only ferries serving twenty
11 (20) terminals in Puget Sound, Washington and Sidney, British Columbia, all as an integral
12 part of the Washington State highway system; and

13
14 **WHEREAS**, **WSF** desires to contract with a qualified **CONCESSIONAIRE** to
15 provide the following services on-board **WSF** vessels: (i) food and beverage service; and (ii)
16 news, books and convenience stores; and

17
18 **WHEREAS**, pursuant to authorization in Revised Code of Washington (RCW)
19 47.60.140 and 47.56.030, **WSF** sought competitive proposals for such concession services
20 and, following evaluation of _____ (____) proposals, selected the **CONCESSIONAIRE'S**
21 Proposal as the one most advantageous to **WSF**; and

22
23 **WHEREAS**, the **CONCESSIONAIRE** is duly authorized and qualified to provide
24 the desired concession service and has signified its capability and willingness to provide such
25 service as an independent contractor in accordance with (i) the terms of this Contract; (ii) the
26 **CONCESSIONAIRE'S** Financial Proposal, by this reference incorporated herein as Exhibit
27 "A"; (iii) the **CONCESSIONAIRE'S** Concept / Service Proposal, by this reference
28 incorporated herein as Exhibit "B"; and (iv) **WSF's** project Request For Proposals, including

1 all Addenda thereto (hereinafter called "RFP") by this reference incorporated herein as
2 Exhibit "C".

3
4 **NOW, THEREFORE**, in consideration of the terms, conditions, covenants, and
5 performances contained herein or attached, incorporated and made a part hereof, the parties
6 hereto agree as follows:

7
8
9 **I.**
10 **DESCRIPTION OF PREMISES**
11

12 A. **WSF** hereby allocates to the **CONCESSIONAIRE**: (i) certain concession space at
13 **WSF**-approved locations aboard vessels owned and operated by **WSF**; and (ii) office
14 and warehouse space at designated terminal locations, all as more specifically
15 described below. The amount of concession space allocated to the
16 **CONCESSIONAIRE** will vary from location to location depending on available
17 space and market conditions. All such concession space is subject to pre-approval in
18 writing by **WSF**. The actual concession spaces approved by **WSF** at all such **WSF**
19 locations, both individually and collectively, are hereinafter referred to as the
20 "Concession Premises". For diagrams and drawings of the Concession Premises,
21 please see RFP Volume II, Exhibits.

22
23 1. **Vessels**

24 The vessel Concession Premises shall consist of:

- 25
26 a. Food preparation and serving areas, dumbwaiters, storage areas and
27 dining areas aboard **WSF's** existing twenty three (23) vessels equipped
28 with such facilities and any other **WSF** vessels subsequently equipped
29 with such facilities, including but not limited to, up to four (4)
30 replacement vehicle / passenger vessels to be constructed during the
31 term of this Contract.
32

1
2 2. **Terminals**

3 The terminal Concession Premises shall consist of:

4
5 a. **Colman Dock**

6 Warehouse space in the Northwest Utility Building at the Seattle Ferry
7 Terminal (Colman Dock / Pier 52) in downtown Seattle, King County,
8 Washington, as shown in the project RFP, consisting of:

- 9 • Dry: 1,250 sq.ft.; and
10 • Refrigerated: 325 sq.ft.

11
12 b. **Anacortes**

13 Office space (for 2-4 staff) and warehouse space at the Anacortes
14 Ferry Terminal in Skagit County, Washington, as shown in the project
15 RFP, consisting of .

- 16 • Dry: 550 sq.ft.; and
17 • Refrigerated: 230 sq.ft.

18
19 Additional warehouse space, if needed, will be the financial responsibility of
20 the Concessionaire.

21
22 B. No on-site office space is available at Colman Dock - Pier 52. **WSF** will examine the
23 potential for alternate office space on **WSF** premises, but none is available at the
24 commencement of this Contract. All off-site office space will be the financial
25 responsibility of the **CONCESSIONAIRE**.

26
27 C. Upon the **CONCESSIONAIRE'S** request, **WSF** shall provide any necessary
28 clarification regarding components of the vessel and terminal Concession Premises.

29
30 D. Upon the **CONCESSIONAIRE'S** request, **WSF** may, in its sole discretion, allocate
31 and authorize (i) an expansion of the Concession Premises aboard any of its vessels,
32 and support space at any of its terminals, subject to space availability and approval in
33 writing by **WSF**.
34

1 E. **WSF**, may, upon fifteen (15) days' prior written notice, reduce, increase, eliminate, or
2 otherwise change any of the Concession Premises allocated to the
3 **CONCESSIONAIRE** if **WSF** determines that such modification is necessary in
4 order to meet **WSF** operational requirements or better serve the traveling public.
5

6 F. The **CONCESSIONAIRE** accepts the Concession Premises in their present
7 condition, after removal of trade fixtures and other personal property of **WSF'S**
8 predecessor food service concessionaire (at the Colman Dock and Anacortes Ferry
9 Terminals). The condition of the Concession Premises shall be verified by the
10 **CONCESSIONAIRE'S** inspection of the Premises prior to the commencement of
11 this Contract.
12
13

14 II. 15 USE OF PREMISES 16

17 A. **WSF** authorized the **CONCESSIONAIRE** to use the vessel Concession Premises to
18 offer food, beverage and retail service for **WSF** customers. Such uses are detailed in
19 the RFP Specifications and may include, but are not limited to:

- 20 • Coffee or espresso bar, beer, wine, hamburgers, seafood, deli, ice cream bar,
21 juice bar, soda fountain, pretzels, hot dogs, Mexican food, Asian food, pizza,
22 or any other use appropriate for quick serve. Coffee, beer and wine should be
23 Northwest brands.
- 24 • A variety of newspapers, magazines and periodicals; a selection of sundry
25 items appealing to both commuter and tourist travelers; packaged snacks and
26 candies; hot coffee, bottled water and other bottled drinks; a selection of
27 popular over the counter medicines; a selection of souvenir items including
28 **WSF** branded shirts, caps, mugs, and other items appealing to tourists.

29
30 B. **WSF** may, in its sole discretion, authorize the **CONCESSIONAIRE** to establish
31 other directly-related concession services, all subject to space availability and
32 approval in writing by **WSF**. **WSF** may also request that the **CONCESSIONAIRE**
33 provide such additional concession services, subject to the provisions in Article V.C
34 herein.
35

1 C. The Concession Premises shall be used only for providing the concession services
2 authorized herein. Other commercial or non-commercial activities, or use and
3 occupancy by other parties of the Concession Premises, are prohibited unless
4 approved in advance and in writing by **WSF**.

5
6 D. There is an existing Concession Contract with a concessionaire providing on-board
7 duty free shopping on the Anacortes - Sidney B.C. ferry route. The duty free
8 concession service is specifically excluded from the scope of this On-board Food,
9 Beverage and Retail Concession Contract.

10
11 E. On-board "retail" concession services are defined as the same or similar products as
12 described in the RFP for service Segment 3, News, Books, and Convenience Stores.
13 **WSF** reserves the right to expand on-board retail concessions in other goods or
14 services with other concessionaires selected on a competitive basis.

15
16
17 **III.**
18 **TERM**
19

20 A. This Contract shall be in force for a term of ten (10) years, commencing at 12:01 a.m.
21 on January 1, 2004, and expiring at 12:00 a.m. (midnight) on January 3, 2014.

22
23 **B. Holding Over**

24 If **WSF** desires to maintain the concession services described herein at **WSF**
25 locations following expiration of this Contract, **WSF** shall make a good faith effort to
26 seek competitive proposals, and award and execute a successor Contract prior to the
27 expiration of this Contract. However, if **WSF** fails to timely execute such a successor
28 contract and the **CONCESSIONAIRE** continues in performance of the services
29 described herein with **WSF's** consent, the resulting tenancy shall be on a month-to-
30 month basis unless the parties agree otherwise in writing. Such month-to-month
31 tenancy shall be governed by the Contract terms and conditions in effect immediately
32 prior to such expiration, unless the parties agree otherwise in writing.

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IV.
INDEPENDENT CONTRACTOR

- 27 A. The parties declare that the **CONCESSIONAIRE** and its employees, while
28 performing this Contract, are acting as independent contractors and not in any manner
29 as officers or employees of **WSF**. Any and all claims that might arise under any
30 Workmen's Compensation Act, Jones Act or Longshore and Harbor Worker's Act on
31 behalf of such employees or other persons under the **CONCESSIONAIRE'S**
32 direction or control, while performing any of the work or services described herein,
33 shall be the sole obligation and responsibility of the **CONCESSIONAIRE**.
- 34 B. As an independent contractor, the **CONCESSIONAIRE** shall coordinate with **WSF**
35 on issues affecting **WSF** operations and maintenance, as specified herein and in the
RFP, such as, but not limited to: transitioning from the former concessionaire,
scheduling issues regarding customer service, construction or remodeling, financial
and sales reporting, and product storage. While agreeing to coordinate with **WSF**, the
CONCESSIONAIRE shall remain solely responsible for its employee relations as
well as its own labor relations, as required by law. Therefore, this agreement to
coordinate efforts shall not create a joint-employer relationship between **WSF** and the
CONCESSIONAIRE, or any subcontractor, franchisee, or licensee operating under
this Contract.

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V.
EXCLUSIVE FRANCHISE

- 27 A. Subject to the provisions in Paragraph B below, the **CONCESSIONAIRE** shall have
28 the exclusive right to provide: (i) food, beverage and retail services (as defined
29 herein) on the vessel Concession Premises; and (ii) alcoholic beverages on those
30 vessel Concession Premises which include galley services.
- 31 B. The exclusive rights in Paragraph A above do not apply to special events (i.e.,
32 meetings, event promotions, parties, etc.) aboard **WSF** vessels, and special event
33 vessel charters, as may be authorized by **WSF** from time to time during the term of
34 this Contract. Further, the **CONCESSIONAIRE** will not have a first right to provide
35

1 such services. **WSF** shall review and approve any provider of concession services for
2 such special events, as deemed in the best interest of **WSF** and the event organizer.

3
4 C. If **WSF** requests, in writing, that the **CONCESSIONAIRE** provide certain additional
5 concession services pursuant to this Contract, whether or not specifically described
6 herein, and if the **CONCESSIONAIRE** fails to commence such concession services
7 within thirty (30) calendar days after receipt of the written request, **WSF** may
8 immediately terminate the **CONCESSIONAIRE'S** franchise rights, if any, for those
9 additional concession services. In such event, **WSF** may itself provide or contract for
10 the provision of those additional concession services.

11
12
13 **VI.**
14 **SCOPE OF SERVICES**
15

16 A. The **CONCESSIONAIRE** shall:

- 17
18 1. Provide food, beverage and retail services (as authorized herein) on the
19 Concession Premises in accordance with the **CONCESSIONAIRE'S**
20 Proposal and the RFP. Deviation from the Proposal or the RFP, in any
21 manner, shall be permitted only with the express consent of the authorized
22 **WSF** representative.
23
24 2. Obtain **WSF'S** approval of the concession facilities' design, size,
25 improvements (including equipment, fixtures and furnishings) prior to any
26 modification / renovation of the Concession Premises, and be solely
27 responsible for all damages, direct and consequential, resulting from the
28 **CONCESSIONAIRE'S** failure to obtain such approval.
29
30 3. Obtain **WSF's** approval for the **CONCESSIONAIRE'S** proposed food and
31 beverage menu, general retail merchandise, other miscellaneous products and
32 services, and customer prices and product quality, for all concession services,
33 prior to commencement of operations under this Contract.
34

4. Provide exceptional customer service combined with the goal of achieving business success. The **CONCESSIONAIRE** shall tailor concession concepts, capital investments, and staff levels to meet varying needs and hours of service.
5. Accept credit card and debit card transactions.
6. Adhere to **WSF's** street pricing requirement. The **CONCESSIONAIRE** and **WSF** will select three (3) sites providing comparable products and services. After the initial pricing approval, **WSF** may review such products, services, prices, quality, etc. then in effect and if they do not fall within the range of the comparable facilities, **WSF** will require adjustments.
7. Ensure that deliveries to and from the Concession Premises are done in a manner and at times that will minimize interference with **WSF** vessel and terminal operations. The **CONCESSIONAIRE** shall ensure that delivery vehicles do not park at terminals longer than the actual time required for pick-up and delivery.
8. Comply with: (i) all federal, state and local statutes, ordinances, regulations and rules pertaining to the **CONCESSIONAIRE'S** operations hereunder, including but not limited to applicable United States Coast Guard and Washington State Department of Health rules, regulations and standards; and (ii) all proper orders of authorized federal, state and/or municipal officers.
9. Coordinate with **WSF'S** authorized representative: (i) concession operational requirements; (ii) Contract compliance; and (iii) other administrative requirements, as needed, to ensure smooth operation of the concession services. Such coordination is important to avoid any potential conflict with **WSF** terminal and vessel operations or with **WSF** customers.

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VII.

HOURS OF OPERATION AND MARKETING

A. Hours of Operation

The **CONCESSIONAIRE** shall provide vessel food and beverage service and / or other concession services during the hours and at those service levels specified in the **CONCESSIONAIRE'S** Proposal and approved by **WSF**; and thereafter specified in seasonal operating schedules to be approved in advance by **WSF**, as detailed below. The **CONCESSIONAIRE** may not adjust the approved service hours and levels without the prior written consent of **WSF**.

B. Operating Plan

1. Sixty (60) days prior commencement of **WSF'S** peak season operating schedule, and sixty (60) days prior commencement of **WSF'S** non-peak season operating schedule, the **CONCESSIONAIRE** shall submit to **WSF** a proposed operating plan to include its proposed services and hours of operation for the upcoming **WSF** sailing season. **WSF** may approve the plan as submitted, or seek agreement on adjustments thereto.
2. At the same time as submittal of its seasonal operating plan, the **CONCESSIONAIRE** shall present, on a prospective basis, its plan for a one (1) year period following the end of the operating season under review.
3. The **CONCESSIONAIRE** shall develop all seasonal and long range operating plans at its sole expense.
4. If the parties cannot agree on a seasonal or long-range operating plan, **WSF** may direct the **CONCESSIONAIRE** to implement an alternative plan affecting service hours, products, services and/or prices. If the **CONCESSIONAIRE** is unable or unwilling to comply with such direction, **WSF** may immediately terminate the **CONCESSIONAIRE'S** rights to the specific concession service under review. Thereafter, **WSF** may contract with a third party for alternative food and beverage service at the affected service location(s), if **WSF** deems appropriate for its customer service. In such event, **WSF** shall not be liable to the **CONCESSIONAIRE** for any damages

whatsoever, and the concession fees payable under this Contract shall be effective for the remaining concession services under this Contract.

C. Marketing Plan

Sixty (60) days prior commencement of **WSF'S** peak season operating schedule, and sixty (60) days prior commencement of **WSF'S** non-peak season operating schedule, the **CONCESSIONAIRE** shall submit to **WSF** a proposed marketing plan, to include a promotions calendar and seasonal marketing concepts. **WSF** may approve the plan as submitted or seek agreement on adjustments thereto. At the same time, the **CONCESSIONAIRE** shall present, on a prospective basis, its marketing plan for a one (1) year period following the end of the operating season under review. The **CONCESSIONAIRE** shall develop all such seasonal and long range marketing plans at its sole expense.

VIII. IMPROVEMENTS TO PREMISES

A. The **CONCESSIONAIRE** shall:

1. Upon **WSF's** request and / or approval, make capital improvements to the Concession Premises. The capital improvements are defined in Paragraphs C and D of this Article, and shall become **WSF's** property upon installation. All or a portion of the capital improvement investment may be deducted from the concession fees payable to **WSF** pursuant to Article XXIV, "Payment," of this Contract.
2. Obtain **WSF'S** approval of proposed modifications to the Concession Premises prior to initial alteration, and thereafter make no alterations without **WSF's** prior, written approval. All such alterations shall become part of the Concession Premises, and shall become **WSF's** property upon the expiration or earlier termination of this Contract unless otherwise provided in a written agreement between the parties.

- 1 3. Subject to the provisions in Paragraph A.1 above, be responsible for the
2 procurement, installation and maintenance of improvements (including
3 equipment, fixtures and furnishings) to the Concession Premises, except any
4 improvements which **WSF** has previously or hereafter agreed, in writing, to
5 provide, install and/or maintain. In purchasing such improvements or
6 operating inventory, the **CONCESSIONAIRE** shall not use the name or
7 credit of **WSF**.
8
- 9 4. Annually, on a mutually agreeable schedule, submit to **WSF** a complete
10 written inventory of all improvements made to the Concession Premises
11 during the preceding calendar or fiscal year. **WSF** shall have the right to tag
12 its property for inventory purposes.
13
- 14 B. The capital improvements described herein include, but are not limited to: food
15 service and other concession equipment; furnishings and decor items; remodeling
16 (structural, electrical, plumbing, etc., including any necessary code compliance
17 work); signage; and any other improvements approved in advance by **WSF**.
18
- 19 C. The capital improvements described herein do not include the cost of: (i) operating or
20 other inventory (e.g., cash registers, utensils, smallwares, tools, expendable
21 equipment), except as otherwise approved by **WSF**; and (iii) personal property of the
22 **CONCESSIONAIRE** which is removable without causing damage to the
23 Concession Premises or any other **WSF** property or facilities thereon, and which the
24 **CONCESSIONAIRE** is entitled to remove under ArticleXXX.A.2. herein.
25

IX.
PERSONNEL

A. The **CONCESSIONAIRE** shall:

1. Provide adequate personnel to staff the concession facilities so as to rapidly service waiting customers. Such personnel shall: (i) remain the employees of the **CONCESSIONAIRE** only; and/or (ii) be subject to the **CONCESSIONAIRE'S** exclusive supervision, direction and control.
2. Ensure that its concession personnel provide courteous and efficient service at all times. Such personnel shall conduct themselves in a proper manner at all times while on the Concession Premises or other **WSF** property, with a high regard for their own safety and for the comfort and safety of all others on such Premises or property.
3. Require its employees working on-board a **WSF** vessel to abide by: (i) all rules and regulations of the State of Washington and the United States Coast Guard (USCG) governing the **CONCESSIONAIRE'S** employees while on duty aboard such vessel; and (ii) all proper orders by authorized personnel issued pursuant to such rules and regulations. The **CONCESSIONAIRE** shall be solely responsible for ensuring that all of its employees working aboard **WSF** vessels have current and valid Z cards issued by the USCG.
4. Ensure that its employees, while on duty, wear clean, neatly pressed attire appropriate for the services provided. The **CONCESSIONAIRE** shall submit the color and design of employee uniforms to **WSF** for prior approval. The cost of such uniforms, including laundering, shall be the sole responsibility of the **CONCESSIONAIRE** and/or its employees.
5. Be solely responsible for determining the applicability of the previous Concessionaire's union contracts and bargaining relationships to the **CONCESSIONAIRE'S** personnel. **WSF** makes no representation regarding such issue, and shall not assume any liability as to the consequences of such a determination.

1
2 B. **WSF** reserves the right to approve, in advance, the suitability of all
3 **CONCESSIONAIRE** management personnel assigned to the concession operations
4 under this Contract. The **CONCESSIONAIRE** shall notify **WSF** in advance of the
5 transfer of any on-site management personnel assigned to this Contract.
6

7 C. Safety and security are a primary concern on **WSF** vessels, at its terminals and in the
8 vehicle holding areas. With the increased emphasis being placed on security by our
9 nation, **WSF** has established safety and security procedures and expects that security
10 measures and attendant procedures in particular will change over the term of this
11 Contract. These changes may affect the **CONCESSIONAIRE'S** operations and
12 employees. **WSF** will make reasonable efforts to minimize negative business impacts
13 to the **CONCESSIONAIRE** when possible. Some specific considerations include:
14
15

16 1. While not considered part of the required manning, or crew, for the vessel to
17 safely operate, the **CONCESSIONAIRE'S** employees are included in **WSF's**
18 safety and security planning and are expected to perform certain safety and/or
19 security functions.
20

21 2. The **CONCESSIONAIRE'S** employees are required to receive **WSF**
22 provided training regarding on-board emergencies. They are included on the
23 Muster List for emergencies at an assistance level and, for example, receive
24 training in fighting fires, crowd control and aiding passengers in evacuations.
25 The **CONCESSIONAIRE'S** employees are included in the **WSF** Safety
26 Management System (SMS), which documents practices and procedures used
27 for on-board safety and compliance with international and domestic vessel
28 safety regulations.
29

30 3. The heightened security of today requires ongoing training of all **WSF** vessel
31 staff, including contract personnel who frequently sail with the vessel, to
32 maintain a vigilant effort in identifying and mitigating security risks. The
33 **CONCESSIONAIRE'S** employees will be included in such training. While
34 the training will be developed and provided by **WSF** at no cost to the
35 **CONCESSIONAIRE** or it's employees, the labor, travel, and other costs of
36 attending the training will be at the **CONCESSIONAIRE'S** sole expense.

- 1
- 2 4. **WSF** training is meant to augment, not supplant, the **CONCESSIONAIRE'S**
- 3 own efforts in training and maintaining proper safety and emergency
- 4 procedures for its employees.
- 5
- 6

7 **X.**

8 **WSF EMPLOYEE MEALS**

9

- 10 A. There are labor agreements between **WSF** and the various unions representing certain
- 11 **WSF** employees. These agreements currently require that food and beverages served
- 12 in the dining areas aboard **WSF** vessels be provided to such employees, at fifty
- 13 percent (50%) of the listed customer price, subject to a maximum purchase limit per
- 14 day, as noted below. Such discount shall apply while such **WSF** employees are: (i)
- 15 at work aboard a **WSF** vessel or at a **WSF** terminal; and /or (ii) commuting to and
- 16 from work aboard a **WSF** vessel. **WSF** shall reimburse the **CONCESSIONAIRE**
- 17 for the remainder of the retail price pursuant to Paragraph C below.
- 18
- 19 B. The **CONCESSIONAIRE** shall provide food and beverages to such persons at
- 20 whatever price discount(s) is in effect under such labor agreements during the term of
- 21 this Contract. The discount herein applies only to a designated maximum dollar value
- 22 of food and beverage purchased by such employees, per day, as specified in the labor
- 23 agreements.
- 24
- 25 C. On a monthly basis, **WSF** shall reimburse the **CONCESSIONAIRE** for that portion
- 26 of the food and beverage prices not paid by the **WSF** employees under Paragraph A.
- 27 above. To obtain such reimbursement, the **CONCESSIONAIRE** shall submit
- 28 vouchers supported by meal slips signed by **WSF** employees. The
- 29 **CONCESSIONAIRE** shall be obligated to pay **WSF** the concession fee specified in
- 30 this Contract based upon the full customer price of such food and beverages.
- 31
- 32 D. If any referenced labor agreement eliminates the price discount(s) during the term of
- 33 this Contract, the discounted sales and reimbursement provisions of this Article shall
- 34 cease as to the affected **WSF** employees. In such event, **WSF** shall provide written
- 35 notice to the **CONCESSIONAIRE**
- 36

XI.
MAINTENANCE AND REPAIRS

A. The **CONCESSIONAIRE** shall:

1. Maintain all Concession Premises and operating equipment in a clean and sanitary condition to **WSF's** satisfaction.
2. Continuously pick up and dispose of all paper, trash, garbage, and other waste resulting from its operations, and make arrangements for prompt and sanitary disposal of all such waste. Until disposal, all waste shall be stored in sealed containers procured by the **CONCESSIONAIRE** and located on the Concession Premises or an alternate location approved by **WSF**. The **CONCESSIONAIRE** shall not dump any waste into Puget Sound or adjacent waters under any circumstances.
3. Be responsible for a proportional share of the cost of: (i) dumpster procurement, repair and replacement; and (ii) scheduled pick-up / disposal services for such dumpsters, at all **WSF** terminals, unless otherwise agreed to between **WSF** and the **CONCESSIONAIRE**. Proportional share shall be based upon the estimated quantity of trash, garbage and other waste deposited in the dumpsters by authorized users.
4. Maintain and repair all vessel Concession Premises and operating equipment in accordance with: (i) United States Coast Guard and other applicable rules and regulations; and (ii) instructions issued by authorized **WSF** personnel. Prior to conducting any maintenance or repair to the vessel Concession Premises, contact the **WSF** Chief Engineer on duty and obtain written permission to proceed. Upon completion, obtain review and approval by **WSF**.

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5. Maintain and repair all terminal Concession Premises and operating equipment in accordance with: (i) applicable building codes, Health Department and other applicable rules and regulations; and (ii) instructions issued by authorized **WSF** personnel. Prior to conducting any maintenance or repair to the terminal Concession Premises, contact the Terminal Agent on duty and obtain written permission to proceed. Upon completion, obtain review and approval by **WSF**.
 6. Immediately carry out all written requests by authorized **WSF** personnel to correct **CONCESSIONAIRE** deficiencies in safety or sanitation. Such deficiencies not immediately remedied may be corrected by **WSF** at the expense of the **CONCESSIONAIRE**.
 7. On vessels with grills and fryers and the related fire suppression systems, steam clean the exhaust hoods and ducts from the galley to the exterior exhaust locations every six (6) months, or earlier, if needed. Exhaust hoods with self-washing systems will require use of the appropriate detergent solution pursuant to the manufacturer's specifications. **WSF** will maintain the related fire suppression systems and fire extinguishers pursuant to the manufacturer's recommendations.
- B. **WSF** will not tolerate any condition on the Concession Premises that has an adverse effect on personal safety. Accordingly, the **CONCESSIONAIRE** shall be solely responsible for the prompt maintenance and repair of everything on the Concession Premises to the satisfaction of **WSF**. For example, maintenance of all equipment, fixtures, signs, floor coverings, ceiling tiles and bulkhead coverings on the vessel Concession Premises shall be the **CONCESSIONAIRE'S** responsibility. Additionally, when interior or exterior walls form a segment of the terminal Concession Premises' decor, then maintenance of such interior or exterior surfaces shall be the **CONCESSIONAIRE'S** responsibility.

XII.
UTILITIES

- A. **WSF**, at its expense, shall furnish the basic utility systems to the Concession Premises, including but not limited to, adequate quantities of available hot and cold water and electricity, heating and air conditioning, and sewage holding and disposal, as appropriate; **Provided**, availability of such utilities is subject to the limitation of the individual vessels and terminals; and **Provided further**, **WSF** shall not be liable whatsoever for any interruption of utility service to the Concession Premises.
- B. The **CONCESSIONAIRE'S** utility usage shall be limited to that necessary to perform the provisions of this Contract. Any changes that may be required in any utility system provided to the Concession Premises to fulfill the purpose of this Contract and provide the services required herein must be approved in advance by **WSF**.

XIII.
ENTRY FOR INSPECTION

- A. The **CONCESSIONAIRE** shall permit any duly authorized **WSF** personnel or consultants, or any duly authorized federal, state or municipal officer to enter onto the Concession Premises at all reasonable times, and without prior notice, for: (i) inspection of the Premises for operations, safety or sanitation; (ii) maintenance, repair or construction work; (iii) response to fire or other emergency; and (iv) conducting service / performance audits and verification of Contract compliance.
- B. **WSF** shall not be liable for any claim for loss, damage, inconvenience or interruption of business arising from any of the above-referenced inspection activities. Further, the right of inspection reserved hereunder shall impose no obligation on **WSF** to make inspections and shall impose no liability upon **WSF** for failure to do so.

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XIV.
SIGNS AND ADVERTISING

- A. The **CONCESSIONAIRE** shall be required to install standard concession identification signs, menu boards, and notices (electrical or otherwise) on the Concession Premises; **Provided**, the **CONCESSIONAIRE** shall not install any sign, menu board or notice without obtaining **WSF'S** prior approval as to its design, message and location. Installations at any other vessel or terminal locations shall be within **WSF'S** sole discretion.
- B. No promotion or trade stimulation materials of any kind, including but not limited to any brochure, map, flyer, sign or insignia, shall be displayed, distributed or placed upon the Concession Premises without **WSF'S** prior approval.

XV.
ACCESS TO PREMISES

- A. Subject to the conditions specified herein, the **CONCESSIONAIRE** shall have unrestricted access to the Concession Premises as necessary to fulfill the terms of this Contract; **Provided**, such rights shall not be exercised in such manner and to such extent as to: (i) impede or interfere with the operation of **WSF** terminals and vessels or business conducted by other **WSF** concessionaires or authorized occupants; or (ii) violate any lease or agreement entered into between **WSF** and a third party.
- B. Subject to: (i) availability of parking, and (ii) the prior approval of the appropriate Terminal Agent, **WSF** shall permit the **CONCESSIONAIRE'S** service vehicles to park free at **WSF** terminals, but only for the minimum time necessary for the **CONCESSIONAIRE'S** delivery / pick-up of products and supplies for its concession operations, or maintenance or repair of the Concession Premises.

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2 **XVI.**

3 **VESSEL PASSES AND PARKING**
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5 A. **Vessel Passes**

6 **WSF** shall provide free, walk-on passage to the **CONCESSIONAIRE'S** employees
7 and supervisory personnel working on-board vessels only as may be required to staff
8 and operate the vessel Concession Premises; **Provided**, **WSF** may require such
9 personnel to present an identifying document or pass. The **CONCESSIONAIRE'S**
10 employees and supervisory personnel boarding for any other reason shall board only
11 upon presentation of an authorized pass (the issuance of which shall be solely in the
12 discretion of **WSF**), travel coupon, or ticket.
13

14 **WSF** shall provide vehicle passes only to: (i) designated **CONCESSIONAIRE**
15 supervisory personnel managing the vessel Concession Premises; and (ii) designated
16 delivery and service / repair personnel servicing the vessel and terminal Concession
17 Premises; **Provided**, **WSF** may require such personnel to present identification with
18 the pass. Such passes may be used only as required to perform the services and serve
19 the purposes of this Contract. **WSF** may revoke a vehicle pass, without notice, if
20 used for non-authorized purposes. In this regard, use of a pass to travel to/from a
21 place of residence to a base of operations or work-site is not an authorized purpose
22 under this Paragraph.
23

24 B. **Parking**

25 Generally, there is no parking at any **WSF** terminal for **CONCESSIONAIRE**
26 personnel. However, subject to space availability and demonstrated need, **WSF** may
27 authorize a limited number of parking spaces for the **CONCESSIONAIRE** at the
28 Anacortes Ferry Terminal. Additionally, **WSF** may authorize a maximum of two (2)
29 parking spaces at the Seattle Ferry Terminal for route service vehicles only.
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XVII.
PROTECTION OF PROPERTY AND SAFETY

A. The **CONCESSIONAIRE** shall:

1. At its sole expense, provide protection for its own property at all times, including inventory, fixtures, and equipment. **WSF** shall have no responsibility for protection of the **CONCESSIONAIRE'S** property, or any liability for loss or theft thereof.
2. At no time permit any fire hazards to exist in regard to wiring of the concession facilities and equipment, or through the accumulation of waste or refuse on or adjacent to the Concession Premises; and immediately report to **WSF** fires or unsafe conditions on the Concession Premises.
3. At no time permit liquids or other substances of a slippery or dangerous nature arising from its operations to accumulate anywhere such substances might result in accident or injury to the **CONCESSIONAIRE'S** or the **WSF'S** patrons and/or employees.
4. Inspect and maintain the Concession Premises to prevent loss or damage to **WSF** or other non-**CONCESSIONAIRE** property, or accident or injury arising from the **CONCESSIONAIRE'S** operations. If any intentional or negligent defacement or damage of **WSF** property is caused by the **CONCESSIONAIRE**, its employees or subcontractors, the cost of repair shall be the sole responsibility of the **CONCESSIONAIRE**.

XVIII.
DAMAGE TO PREMISES

A. If, during the Contract term, the Concession Premises or any **WSF** vessel or terminal of which the Concession Premises are a part is damaged by fire or other casualty not occurring through the **CONCESSIONAIRE'S** performance of this Contract, and if such damage is repairable within a reasonable time and at a reasonable cost, **WSF** and the **CONCESSIONAIRE** shall repair such damage to their respective property, with due diligence, and this Contract shall not be affected thereby.

B. If, during the Contract term, the Concession Premises or any **WSF** vessel or terminal of which the Concession Premises are a part is damaged by fire or other casualty not occurring through the **CONCESSIONAIRE'S** performance of this Contract, and if such damage is so extensive that it cannot be repaired within a reasonable time and at a reasonable cost, **WSF** shall have the option to terminate this Contract as to the Concession Premises on / at such damaged vessel or terminal upon thirty (30) days' prior written notice, effective as of a date not more than sixty (60) days after the occurrence. If **WSF** shall fail to timely notify the **CONCESSIONAIRE** of its election, then, unless the parties agree otherwise, this Contract shall automatically terminate as to such Concession Premises sixty (60) days after the occurrence of the damage.

In the event of such termination, with or without notice: (i) the **CONCESSIONAIRE** shall immediately surrender the subject Concession Premises to **WSF**; (ii) **WSF** shall have no liability to the **CONCESSIONAIRE** for any lost profits or interruption / loss of business resulting from such termination; and (iii) this Contract shall remain in full force and effect as to the remainder of the Concession Premises.

1
2 **XIX.**

3 **CHANGES TO PREMISES AND VESSEL SERVICE**
4

5 **A. Changes to Concession Premises**

6 1. **WSF** has a primary obligation to operate the **WSF** for the benefit of its
7 customers and their vehicles. In order to accomplish this obligation, it may be
8 necessary for **WSF**, at some time or times during the term hereof, to make
9 changes in the Concession Premises. If and when such changes become
10 necessary, the parties will mutually cooperate in implementing such changes
11 in order to minimize any disruption in **WSF** or **CONCESSIONAIRE**
12 operations.

13
14 2. **WSF** shall not be liable for any **CONCESSIONAIRE** loss, damage,
15 inconvenience or interruption of business arising from: (i) changes to the
16 Concession Premises as deemed necessary by **WSF**; (ii) asbestos removal
17 aboard any **WSF** vessel or at any of its terminals; (iii) the remodel or
18 refurbishment of any ferry terminal or vessel; and/or (iv) any other
19 improvements / renovations whether or not they are associated with **WSF**
20 actions.

21
22 **B. Changes in Vessel and Routes**

23 1. In the event **WSF** is prevented from maintaining its vessel sailing schedules or
24 providing operational Concession Premises due to strike, riot, weather, vessel
25 break-down or repair, security measures, or any other causes whatsoever,
26 **WSF** shall not be liable for any damage, loss or increase in operating cost
27 sustained by the **CONCESSIONAIRE** by reason thereof. **WSF** also reserves
28 the right, without liability for any damage, loss or increase in operating cost,
29 to discontinue, increase or reduce the operation of its vessels at any time or
30 times as it may see fit. **WSF** may also substitute another vessel or vessels in
31 place of any one or more of its vessels on any route.
32

2. **WSF** will use reasonable best efforts to promptly notify the **CONCESSIONAIRE** of any such changes in vessels and routes. Despite any and all such changes in service and possible lack of notice to the **CONCESSIONAIRE**, the **CONCESSIONAIRE** shall remain obligated to provide the concession services defined herein to the extent that it remains possible to do so.

XX.

ASSIGNMENT, SUB-CONTRACT

A. General

Notwithstanding the provisions of Paragraph B of this Article, the **CONCESSIONAIRE** shall not assign, delegate or transfer this Contract, or the obligations incurred hereunder, in whole or in part, by operation of law or otherwise, or sub-contract for the management or operation of the concession facilities authorized herein, or parts thereof, without **WSF's** prior written approval. Such approval shall not operate to relieve the **CONCESSIONAIRE** of any of its duties and obligations hereunder, unless specified by **WSF** in writing; nor shall such approval affect any remedies available to **WSF** that may arise from non-performance of the Contract.

B. Subcontracted Services

If **WSF** authorizes the **CONCESSIONAIRE** to subcontract any concession services under this Contract, the **CONCESSIONAIRE** and the subcontractor shall abide by the applicable service provisions in the RFP and this Contract. The subcontractor shall indicate such willingness in writing. For all subcontracted services, the **CONCESSIONAIRE** shall pay **WSF** the same concession fees applicable to non-subcontracted services, in accordance with the concession fee schedule specified in Article XXIV herein.

1
2 **C. M/WBE Participation**

3 This Contract has voluntary goals for participation by Minority Business Enterprises
4 (MBE's) and Women's Business Enterprises (WBE's) in the purchase of products,
5 supplies and/or services. The goals are voluntary, but achievement of the goals is
6 encouraged. The participation goals are as follows:

- 7 1. Ten percent (10%) to State-certified MBEs, based upon the
8 **CONCESSIONAIRE'S** annual expense for the procurement of products,
9 supplies and/or services; and
10 2. Six percent (6%) to State-certified WBEs, based upon the
11 **CONCESSIONAIRE'S** annual expense for the procurement of products,
12 supplies and/or services.
13

14 **WSF** shall monitor the **CONCESSIONAIRE'S** compliance with the MBE and WBE
15 goals to ascertain level of achievement and demonstrated good faith effort.
16

17
18 **XXI.**

19 **TAXES AND ASSESSMENTS**
20

21 A. The **CONCESSIONAIRE** shall be liable for, and shall pay throughout the term of
22 this Contract: (i) all taxes (e.g., sales tax) payable for or on account of the retail sales
23 generated under this Contract; (ii) all taxes (including personal property tax, B & O
24 tax, leasehold tax and any other such taxes), assessments and license fees, if any,
25 payable for or on account of the **CONCESSIONAIRE'S** use and occupancy of the
26 Concession Premises; (iii) all taxes on the **CONCESSIONAIRE'S** equipment
27 installed on **WSF** property pursuant to this Contract; and (iv) any taxes levied on, or
28 measured by, the concession fees payable hereunder.
29

30 B. The **CONCESSIONAIRE** shall reimburse **WSF** for all such taxes paid or payable by
31 **WSF**. With respect to any tax on the concession fee payments hereunder, the
32 **CONCESSIONAIRE** shall pay to **WSF** with each fee payment an amount equal to
33 such tax on that particular payment. All other tax amounts for which **WSF** is or will
34 be entitled to reimbursement from the **CONCESSIONAIRE** shall be payable by the

1 **CONCESSIONAIRE** to **WSF** at least fifteen (15) calendar days prior to the due
2 dates of the respective tax amounts involved.

3

4 C. Notwithstanding the foregoing, the **CONCESSIONAIRE** shall have the right to
5 challenge any levied taxes or assessments relating to the services provided pursuant to
6 this Contract.

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XXII.

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CONTRACT SECURITY

11

12 A. The **CONCESSIONAIRE**, at its own expense, shall deliver to **WSF** and maintain in
13 good standing throughout the term of this Contract, and sixty (60) days thereafter, a
14 surety Contract Bond in the amount of Five Hundred Thousand Dollars (\$500,000.00)
15 covering the **CONCESSIONAIRE'S** performance and payment obligations under
16 this Contract, and issued by a properly licensed surety company on a form acceptable
17 to **WSF**.

18

19 B. Notwithstanding such Bond, the **CONCESSIONAIRE** shall not be relieved of, and
20 shall reimburse **WSF** for, any loss or additional expense incurred by **WSF** as a result
21 of the **CONCESSIONAIRE'S** default or failure to satisfactorily perform the terms of
22 this Contract, including a sum for reasonable attorney's fees if litigation shall be
23 instituted hereon and **WSF** prevails in such litigation or on appeal.

24

25 C. If the **CONCESSIONAIRE** substantiates to the satisfaction of **WSF** that the
26 Contract Bond required herein is unattainable or is less comprehensive than alternate
27 security proposed by the **CONCESSIONAIRE**, **WSF** may, in its sole discretion,
28 authorize the **CONCESSIONAIRE** to procure and maintain substitute security
29 acceptable to **WSF**.

30

XXIII.
INSURANCE

A. At its sole expense, the **CONCESSIONAIRE** shall procure the insurance required under "Types of Insurance" in this Article. Such insurance shall cover injury to persons and/or property suffered by **WSF** or a third party, as a result of performance of the Contract by the **CONCESSIONAIRE** or by any subcontractor. This coverage shall also provide protection against injuries to all employees of the **CONCESSIONAIRE** and the employees of any subcontractor. The required insurance shall be provided by companies or through sources approved by the Washington State Insurance Commissioner pursuant to Chapter 48.05 RCW.

B. Evidence of insurance shall be furnished to **WSF** prior to execution of the Contract. Such evidence, executed by the carrier's representative and issued to **WSF**, shall consist of an ACORD form Certificates of Insurance evidencing the minimum insurance coverages required under this Article. Acceptance by **WSF** of deficient evidence does not constitute a waiver of Contract requirements.

C. **Types of Insurance**

1. Commercial General Liability Insurance written under ISO form CG0001, or its equivalent, with minimum limits of \$2,000,000 each occurrence and \$4,000,000 in the aggregate for each policy year. Products and completed operations coverage shall be provided for a period of one (1) year following expiration or earlier termination of the Contract.

The Commercial General Liability insurance shall include coverage for the performance of all concession services under the Contract. There shall be no exclusion for watercraft in the insurance policy. Such insurance shall cover all operations by, or on behalf of, the **CONCESSIONAIRE** including all operations by a subcontractor. Such insurance shall cover: bodily injury and property damage liability, including coverage for premises and operations; products and completed operations; contractual liability; broad form property damage, including property in the **CONCESSIONAIRE'S** care, custody and control; and personal injury liability. **WSF** shall be

1 named as an additional insured in connection with the
2 **CONCESSIONAIRE'S** performance of the Contract.

3
4 2. Commercial Automobile Liability Insurance providing bodily injury and
5 property damage liability coverage for all owned and non-owned vehicles
6 assigned to or used in the performance of the Contract, for a combined
7 single limit of not less than \$1,000,000 each occurrence. **WSF** shall be
8 named as an additional insured in connection with the
9 **CONCESSIONAIRE'S** performance of the Contract.

10
11 3. Worker's Compensation Insurance for the **CONCESSIONAIRE'S**
12 employees engaged in performance of the Contract, as required by State
13 law. The Contractor shall be responsible for Workers' Compensation
14 Insurance for any subcontractor who provides services under the Contract.

15
16 4. United States Longshore and Harbor Workers' (U.S. L&H) Insurance and
17 contingent coverage for Jones Act (Marine Employers Liability) in
18 compliance with Federal Statutes.

19
20 D. All insurance policies and Certificates of Insurance shall include a requirement
21 providing for a minimum of 45 days' prior written notice to **WSF** of any cancellation
22 or reduction of coverage.

23
24 E. The **CONCESSIONAIRE'S** failure to maintain the insurance as required shall
25 constitute a material breach of Contract upon which **WSF** may, after giving five (5)
26 working days' notice to the **CONCESSIONAIRE** to correct the breach, immediately
27 terminate the Contract or, at its discretion, procure or renew such insurance and pay
28 any and all premiums in connection therewith, with any sums so expended to be
29 repaid to **WSF** on demand.

30
31 F. Upon written request from **WSF**, following a claim that may result in the
32 **CONCESSIONAIRE'S** indemnification obligation, the **CONCESSIONAIRE** shall
33 provide to **WSF** copies of the policies required under this Article within five (5)
34 working days after the request.

1 G. If the **CONCESSIONAIRE** has not fully complied with the insurance requirements
2 in this Article, **WSF** may take any action available to it under any other provisions of
3 the Contract, or as otherwise provided in law.

4
5 H. The insurance coverage and other requirements in this Article shall not limit the
6 **CONCESSIONAIRE'S** responsibilities under this Contract including, but not
7 limited to, duties of liability and indemnity.

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10 **XXIV.**
11 **INDEMNIFICATION**
12

13 A. At its, own expense, the **CONCESSIONAIRE** hereby agrees to indemnify and hold
14 harmless **WSF**, its, officers, agents, employees and assigns, from and against all
15 claims, demands, losses, costs, penalties, damages, judgments and suits at law or in
16 equity, of whatsoever nature ("actions"), brought against **WSF** arising from, in
17 connection with, or incident to the performance of, or failure to perform, the
18 provisions of this Contract by the **CONCESSIONAIRE**, its officers, agents,
19 employees or assigns, whether or not such action is based on a claim of misconduct or
20 negligence of **WSF** or unseaworthiness of **WSF** property. The
21 **CONCESSIONAIRE** further agrees to defend **WSF** in any litigation, including
22 payment of any costs or attorney's fees, for any claims or action commenced thereon
23 arising out of or in connection with such acts or activities authorized by this
24 Agreement.

25
26 This indemnity obligation shall not include such claims, costs, damages or expenses
27 that may be caused by the sole negligence of **WSF**. Additionally, if the claims or
28 damages are caused by or result from the concurrent negligence of (a) the
29 **CONCESSIONAIRE**, its officers, agents, employees or assigns and (b) **WSF**, its
30 officers, agents, employees or assigns, and involve those actions covered by RCW
31 4.24.115, this indemnity provision shall be valid and enforceable only to the extent of
32 the negligence of the **CONCESSIONAIRE** or that of its officers, agents, employees
33 or assigns.

XXV.
PAYMENT

In exchange for the concession rights granted herein, the **CONCESSIONAIRE** agrees to abide by the following payment provisions during the term of this Contract:

A. Concession Fees

1. For each full or partial calendar month of this Contract, the **CONCESSIONAIRE** shall pay to **WSF** a concession fee equal to _____ **Percent (____%) of all gross sales** for the On-Board Food, Beverage and Retail services under this Contract.
2. The minimum monthly concession fee for the On-board Food, Beverage and Retail service, for all service categories, shall be the greater of: (i) eleven percent (11%) of all gross sales, excluding sales tax; or (ii) \$72,000 for the months of October – April; and \$110,000 for the months of May – September unless the **CONCESSIONAIRE** proposes and **WSF** accepts a higher concession fee. Effective at the beginning of year three of the Contract Term, the minimum monthly Concession Fee shall be the greater of eleven percent (11%) of gross sales, excluding sales tax, or eighty percent (80%) of the average monthly Concession Fees for the same periods of the two (2) previous years.
3. For concessions at Colman Dock or other Terminals that require facility construction, the concession fee will begin on the scheduled date for commencement of the concession operations, as agreed to in advance by **WSF** and the **CONCESSIONAIRE**.
4. The term “ gross sales” as used herein shall mean the total dollar amount of sales made with respect to the **CONCESSIONAIRE’S** operations conducted in or from the Concession Premises, whether such activities shall be operated by the **CONCESSIONAIRE** or by any subcontractor, or under any other arrangement authorized by **WSF**, excluding, however, any sales or excise taxes which are chargeable against the customer by the **CONCESSIONAIRE** or by the subcontractor, if any, and further excluding refunds. Such gross

1 sales shall include all sales, whether at retail or otherwise, cash or credit,
2 irrespective of whether or not credit accounts are collected.
3

4 **B. Other Service Contracts**

5 During the term of this Contract, **WSF** intends to implement other concession
6 services under separate contracts outside the scope of this Contract. Such services
7 may include:

- 8 1. on-shore food and beverage service;
 - 9 2. on-shore news, books and convenience stores;
 - 10 3. on-shore fast food service;
 - 11 4. on-board and on-shore cold beverage vending service;
 - 12 5. on-board and on-shore hot beverage and snacks vending service
 - 13 6. on-board and on-shore game vending machines; and
 - 14 7. other on-board and/or on-shore retail services.
- 15

16 In the event **WSF** implements any or all of these other concession services, **WSF** will
17 not consider any reduction in concession fees under this Contract.
18

19 **C. Capital Improvements**

20 *[The following is applicable only if the **CONCESSIONAIRE'S** proposal included a*
21 *concession fee credit / deduct provision for capital improvements]*
22

23 All or a portion of the capital improvements investment under this Contract may be
24 credited against (i.e., deducted from) the concession fees payable to **WSF**; **Provided**,
25 all such expenditures must be pre-approved by **WSF**, and the credit may not exceed
26 the concession fee payable to **WSF** in any particular month, unless otherwise
27 approved in advance and in writing by **WSF**. The balance of any excess expenditure
28 shall be recorded and credited against the concession fee for the next month, and
29 succeeding months as necessary. Further, expenditure balances remaining at the end
30 of a Contract year may be carried forward to the next Contract year.
31

32 **D. Due Date**

33 For each calendar month of this Contract, the **CONCESSIONAIRE** shall pay all
34 funds owed to **WSF** no later than the fifteenth (15th) calendar day of the following
35 month, addressing such payment to: Revenue Accountant, Washington State Ferries,
36 P.O. Box 3985, Seattle, Washington 98124-3985. Checks should be made payable to

1 Washington State Ferries, and each payment shall be accompanied by a financial
2 statement pursuant to Article XXV.

3
4 At some time during the term of this Contract, **WSF** may, in its sole discretion,
5 authorize the use of wire transfer or other method of electronic payment, if allowed
6 by the **WSF** accounting system.

7
8 E. **Interest**

9 The **CONCESSIONAIRE** shall pay interest monthly at the annual rate of twelve
10 percent (12%), or the maximum rate permitted by applicable law, whichever is less,
11 on all sums owing to **WSF** under this Contract, commencing on the date the same is
12 first due and payable.

13
14
15 **XXVI.**
16 **REPORTS**

- 17
18 A. The **CONCESSIONAIRE** shall prepare and submit to **WSF**: (i) a monthly financial
19 statement signed by the CFO or Controller, in the form and format specified by **WSF**
20 including detail and sequence of items, to be submitted with the monthly concession
21 fee; (ii) reports of operating statistics as requested by **WSF**; and (iii) reports of any
22 subcontractors operating under the Contract. All such reports shall be available to
23 **WSF** in electronic format.

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25
26 **XXVII.**
27 **ACCOUNTING PROCEDURES**

- 28
29 A. The **CONCESSIONAIRE** shall adopt bookkeeping or accounting methods that will,
30 in the opinion of **WSF**, comply with generally accepted accounting principles and
31 accurately disclose the **CONCESSIONAIRE'S** income and operating costs under
32 this Contract. If requested by **WSF**, the **CONCESSIONAIRE**, at its sole expense,
33 shall provide **WSF** an external certified public accountant's audit report on all of the
34 **CONCESSIONAIRE'S** concession services provided during the preceding Contract
35 year or the **CONCESSIONAIRE'S** most recent fiscal year.

- 1
- 2 B. The **CONCESSIONAIRE** shall make available for inspection all of its concession
- 3 operation books, accounts and records as may be reasonably required for audit
- 4 purposes. Such records shall be made available to **WSF** in Seattle for inspection and
- 5 audit at all reasonable times during the term of this Contract and for three (3) years
- 6 after final payment hereunder; **Provided**, if any litigation, claim or audit is started
- 7 before expiration of this three (3) year period, the records shall be retained until all
- 8 litigation, claims or audit findings involving the records have been resolved. The
- 9 **CONCESSIONAIRE** shall also permit **WSF** to check receipts from the
- 10 **CONCESSIONAIRE'S** cash registers during such period.
- 11
- 12 C. If at any time during the Contract term **WSF** requests reasonable changes in format,
- 13 type or detail of accounting data, the **CONCESSIONAIRE** shall make the requested
- 14 adjustments at no cost to **WSF**.
- 15
- 16

17 **XXVIII.**

18 **NON-DISCRIMINATION**

19

- 20 A. **Customers**
- 21 Subject to applicable laws or regulations, the **CONCESSIONAIRE** agrees that no
- 22 person, on the grounds of race, color, creed, national origin, marital status, age, sex,
- 23 or the presence of any sensory, mental or physical handicap shall be denied the
- 24 benefits of, or be otherwise unlawfully subjected to discrimination in their access to
- 25 and use of the vending equipment on the Concession Premises.
- 26
- 27 B. **Title VI**
- 28 During the performance of this Contract, the **CONCESSIONAIRE**, for itself, its
- 29 assignees and successors in interest, agrees as follows:
- 30 1. Compliance With Regulations
- 31 The **CONCESSIONAIRE** shall comply with the Regulations relative to
- 32 nondiscrimination in federally assisted programs of the U.S. Department of
- 33 Transportation (hereinafter referred to as USDOT), Title 49, Code of Federal
- 34 Regulations, part 21, as they may be amended from time to time, (hereinafter

referred to as the Regulations), which are herein incorporated by reference and made a part of this Contract.

2. Nondiscrimination

The **CONCESSIONAIRE**, with regard to the work performed by it during the Contract, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The **CONCESSIONAIRE** shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Contract covers a program set forth in Appendix B of the Regulations.

3. Solicitations for Subcontracts, Including Procurement of Materials and Equipment

In all solicitations either by competitive bidding or negotiations made by the **CONCESSIONAIRE** for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the **CONCESSIONAIRE** of the **CONCESSIONAIRE'S** obligations under this Contract and the Regulations relative to nondiscrimination on the ground of race, color, sex, or national origin.

4. Information and Reports

The **CONCESSIONAIRE** shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Washington State Department of Transportation or the USDOT to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the **CONCESSIONAIRE** is in the exclusive possession of another who fails or refuses to furnish this information, the **CONCESSIONAIRE** shall so certify to the Washington State Department of Transportation, or the USDOT, as appropriate, and shall set forth what efforts it has made to obtain the information.

1 5. Sanctions for Noncompliance

2 In the event of the **CONCESSIONAIRE'S** noncompliance with the
3 nondiscrimination provisions of this Contract, the Washington State
4 Department of Transportation shall impose such Contract sanctions as it or the
5 USDOT may determine to be appropriate, including, but not limited to:

- 6
- 7 a. Imposition of fines or other financial remedies under the Contract until
8 the **CONCESSIONAIRE** complies, and/or;
- 9 b. Cancellation, termination, or suspension of the Contract, in whole or in
10 part.

11 6. Incorporation of Provisions

12 The **CONCESSIONAIRE** shall include the provisions of paragraphs 1
13 through 5 in every subcontract, including procurement of materials and leases
14 of equipment, unless exempt by the Regulations, or directives issued pursuant
15 thereto.

16 The **CONCESSIONAIRE** shall take such action with respect to any
17 subcontractor or procurement as the Washington State Department of
18 Transportation or the USDOT may direct as a means of enforcing such
19 provisions including sanctions for noncompliance; Provided, however, that in
20 the event the **CONCESSIONAIRE** becomes involved in, or is threatened
21 with, litigation with a subcontractor or supplier as a result of such direction,
22 the **CONCESSIONAIRE** may request the Washington State Department of
23 Transportation to enter into such litigation to protect the interests of the state
24 and, in addition, the **CONCESSIONAIRE** may request the United States to
25 enter into such litigation to protect the interests of the United States.

26

27 D. The **CONCESSIONAIRE** shall use the Concession Premises in compliance with all
28 other requirements imposed pursuant to any federal, state or municipal laws or
29 regulations on discrimination.

30

31 E. The breach of any of the above non-discrimination covenants shall be a material act
32 of default entitling **WSF** to terminate this Contract in accordance with the procedures
33 set forth herein.

34

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2 **XXIX.**
3 **DISPUTES**
4

5 A. **Administrative Review**

6 **WSF** and the **CONCESSIONAIRE** shall make a good faith effort to resolve any
7 dispute arising under this Contract. Any such dispute which is not resolved by
8 agreement between the parties shall be submitted in writing to **WSF's** Director / CEO
9 for administrative review. After giving full consideration to both parties' positions,
10 the Director / CEO shall issue a written, reasoned decision and mail or otherwise
11 furnish a copy thereof to both parties. The decision of the Director / CEO shall be
12 final and conclusive subject to the provisions in Paragraph B below. Pending the
13 administrative decision of a dispute hereunder, the **CONCESSIONAIRE** shall
14 proceed diligently with the performance of this Contract.
15

16 This administrative review process is an express condition precedent to the institution
17 of mediation pursuant to Paragraph B below.
18

19 B. **Mediation**

20 If either **WSF** or the **CONCESSIONAIRE** wishes to appeal an administrative
21 decision issued pursuant to Paragraph A above, it may not bring any claim against the
22 other party unless the claim is first presented for non-binding mediation before a
23 single mediator under the applicable Mediation Rules of the American Arbitration
24 Association. A representative of **WSF** and a representative of the
25 **CONCESSIONAIRE**, both having full authority to settle the claim, must attend the
26 mediation session. This provision requiring pre-filing mediation shall be
27 incorporated by reference in all agreements between the **CONCESSIONAIRE** and
28 its sub-contractors and suppliers. To the extent that any of the sub-contractors or
29 suppliers has any interest in the claim, their representatives, with full authority to
30 settle a claim on their behalf, shall also attend the mediation session.
31

32 Mediation is an express condition precedent to the institution of a claim on any
33 dispute arising under this Contract.
34

1
2 **C. Standard of Review**

3 On an appeal of any dispute resolution pursuant to Paragraph A above, **WSF** and the
4 **CONCESSIONAIRE** agree that the standard of review shall be whether the
5 administrative decision was arbitrary and capricious.
6
7

8 **XXX.**

9 **FINES AND TERMINATION**
10

11 **A. Fines For Non-performance**

12 **WSF** may impose on the **CONCESSIONAIRE** fines not to exceed One Thousand
13 Dollars (\$1,000.00) per violation per day (for each location where the violation
14 occurred), for the **CONCESSIONAIRE'S** or its subcontractor's failure to take
15 corrective action on a material breach of this Contract. Before any such fine may be
16 assessed, **WSF** shall issue a written notice to the **CONCESSIONAIRE**, specifying
17 the exact nature of the breach, the corrective action to be taken, and a reasonable
18 period of time in which to respond and complete such action. If the
19 **CONCESSIONAIRE** does not fully comply with the notice, without reasonable
20 justification, then **WSF** shall issue a written fine, payable with the next monthly
21 concession fee.
22

23 There shall be no limitation on the number and frequency of such fines, including
24 subsequent, cumulative fines for the same breach, if not timely corrected. All such
25 breaches which are not timely corrected shall be sufficient cause, singularly and
26 cumulatively, for default termination of this Contract, if deemed necessary by **WSF**.
27 Any such fine shall not be a prerequisite to, nor shall it affect, any other available
28 remedy arising from the **CONCESSIONAIRE'S** breach of this Contract.
29

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2 **B. Termination for Convenience**

3
4 1. Notice of Termination

5 **WSF** may, in its sole discretion, terminate this Contract in whole or in part,
6 for convenience, upon at least six (6) months' prior written notice to the
7 **CONCESSIONAIRE**; **Provided**, no such termination may become effective
8 during the period May 1 through September 30, in any Contract year, due to
9 peak seasonal traffic.

10
11 2. Damages

12 If this Contract is terminated for convenience, in full or in part, the
13 **CONCESSIONAIRE** shall be liable only for payment in accordance with the
14 provisions of this Contract for the concession services provided prior to the
15 effective date of termination. If the termination is partial, payment for the
16 remaining concession services shall be unaffected by such termination.

17
18 In the event of such full or partial Contract termination, **WSF** shall not be
19 liable for the **CONCESSIONAIRE'S** incidental or consequential damages,
20 including, but not limited to, cost of inventory, lost profits and loss or
21 interruption of business, except as follows. For a full Contract termination,
22 the **CONCESSIONAIRE** shall be entitled to recover the cost of its **WSF**-
23 approved capital improvements investment to the extent such expenses have
24 not already been credited against (i.e., deducted from) the concession fees
25 payable to **WSF** (if authorized), or otherwise depreciated by the
26 **CONCESSIONAIRE**, as of the effective date of termination.

27
28 **C. Termination for Default**

29
30 1. Notice of Default

31 **WSF**, by prior written notice, may terminate this Contract, in whole or in part,
32 for failure of the **CONCESSIONAIRE** to perform any material provision of
33 this Contract. Such notice shall specify the default(s) then outstanding, and
34 shall provide advance notice equal to the longer of: (i) fourteen (14) calendar
35 days; or (ii) a period of time determined by **WSF** as reasonably necessary to
36 remedy the default(s). **WSF'S** acceptance of **CONCESSIONAIRE'S**

1 payment or services for any period or periods after a default by the
2 **CONCESSIONAIRE** hereunder shall not be deemed a waiver of such default
3 unless **WSF** shall so intend and shall so advise the **CONCESSIONAIRE** in
4 writing. No waiver by **WSF** of any **CONCESSIONAIRE** default hereunder
5 shall be construed to be or act as a waiver of any subsequent default by the
6 **CONCESSIONAIRE**.

7
8 2. Termination and Extension

9 After the expiration of the default notice period, if one or more of the defaults
10 described in such notice then remains unremedied, this Contract shall
11 terminate without further notice and all rights of the **CONCESSIONAIRE**
12 shall cease. **WSF** may, in writing and at its option, extend the above period if,
13 in the sole judgment of **WSF**, an extension is justified.
14

15 3. Assignment for Benefit of Creditors, Insolvency, or Bankruptcy

16 To the extent permissible by law, appointment of a receiver to take possession
17 of the **CONCESSIONAIRE'S** assets, the **CONCESSIONAIRE'S**
18 assignment for benefit of creditors, or the **CONCESSIONAIRE'S** insolvency
19 or taking or suffering action under any Bankruptcy Act is a breach of this
20 Contract entitling **WSF** to terminate this Contract in accordance with the
21 provisions herein.
22

23 4. Performance by WSF

24 Notwithstanding the provisions in Paragraph B.1, if the **CONCESSIONAIRE**
25 defaults in the performance of any material provision of this Contract, and if
26 **WSF** deems that an emergency exists as a direct result of such default, **WSF**
27 may: (i) immediately terminate this Contract, in whole or in part, effective
28 upon the **CONCESSIONAIRE'S** receipt of written notice thereof; and (ii)
29 perform or cause to be performed such Contract provision(s). In such case,
30 **WSF** shall not be liable for damages by reason of such termination or entry
31 onto the Concession Premises. **WSF** may also avail itself of any other remedy
32 provided by law. Emergencies hereunder include, but are not limited to:
33 endangerment of life or property; failure to timely obtain insurance or
34 Contract Security, or failure to pay any taxes required by this Contract.
35

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2 5. Damages

3 In the event **WSF** terminates this Contract, in whole or in part, for failure of
4 the **CONCESSIONAIRE** to perform a material provision herein, the
5 **CONCESSIONAIRE** shall be liable for Contract payments owed **WSF** to the
6 effective date of termination, plus **WSF'S** damages and expenses, including
7 but not limited to the additional cost, if any, of substitute, comparable
8 services, and the reduced revenues, if any, to **WSF**.
9

10
11 **XXXI.**

12 **REDELIVERY OF PREMISES**

13
14 A. Upon the expiration or earlier termination of this Contract, the **CONCESSIONAIRE**
15 shall:
16

17 1. Immediately quit and surrender the Concession Premises and any other **WSF**
18 property in a systematic and orderly manner and redeliver such Premises and
19 property to **WSF** in as good state and condition as they were at the
20 commencement of the **CONCESSIONAIRE'S** operations under this
21 Contract, except for: (i) ordinary wear and tear; and (ii) damage not caused,
22 in whole or in part, by the **CONCESSIONAIRE'S** operations under this
23 Contract.
24

25 2. Unless otherwise agreed upon between the parties, remove from the
26 Concession Premises the **CONCESSIONAIRE'S** personal property that is
27 removable without causing damage to the Concession Premises or any other
28 **WSF** property or facilities thereon. Title to any such items left on the
29 Concession Premises after ten (10) days following expiration or earlier
30 termination of this Contract shall pass automatically to **WSF**; **Provided**, this
31 provision shall not apply to any of the **CONCESSIONAIRE'S** personal
32 property which **WSF** may allow to remain on the Concession Premises
33 pending sale to a successor concessionaire; but if such sale is not completed
34 within reasonable time, or upon earlier notice from **WSF**, the
35 **CONCESSIONAIRE** shall immediately remove all such personal property
36 from the Concession Premises and restore such Premises, as necessary.

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3. Remain fully liable for (ii) all clean-up resulting from the close-out activities specified in this Article; and (ii) the cost of restoring the Concession Premises and any other **WSF** property to the condition specified in Paragraph A.1.

XXXII.
NOTICE AND APPROVAL

Whenever notice is required to be given under this Contract, it shall be sent, facsimiled, or delivered in writing to the following respective addresses:

WSF: Washington State Ferries
2911 Second Ave.
Seattle, Washington 98121-1012

Attn.: Brian Volkert
Business Development Manager

CONCESSIONAIRE: _____

Attn.: _____

or to such other respective addresses as either party may hereafter designate in writing. Notice sent by mail shall be deemed to have been given three (3) days after proper mailing, and the postmark affixed by the U.S. Post Office shall be conclusive evidence of the date of mailing. Approvals, where required by this Contract, shall be effective in the same manner.

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2 **XXXIII.**
3 **SEVERABILITY**
4

5 If any term or provision of this Contract or the application thereof to any person or
6 circumstances shall, to any extent, be invalid or unenforceable, the remainder of this
7 Contract, or the application of such term or provision to persons or circumstances other than
8 those as to which it is held invalid or unenforceable, shall not be affected thereby and shall
9 continue in full force and effect.
10

11 **XXXIV.**
12 **GOVERNING LAW**
13

14 This Contract shall be deemed to be made in the County of Thurston, State of Washington,
15 and the legal rights and obligations of **WSF** and the **CONCESSIONAIRE** shall be
16 determined in accordance with the laws of the State of Washington. All legal actions in
17 connection with this Contract shall be brought in the County of Thurston, State of
18 Washington.
19

20 **XXXV.**
21 **ENTIRE AGREEMENT**
22

23 A. This Contract, together with all attachments hereto, constitutes the entire agreement
24 between the parties. There are no terms, obligations, covenants or conditions other
25 than those contained herein. No modification or amendment of this Contract shall be
26 valid and effective unless evidenced by an agreement in writing.
27

28 B. To the extent that there is a conflict between this Contract, the
29 **CONCESSIONAIRE'S** Financial Proposal, its Concept / Service Proposal and/or the
30 project RFP package, the provisions of the respective documents shall govern in the
31 following order:
32

- 33 1. This Contract, together with any attachments;
 - 34 2. The project RFP package;
 - 35 3. The **CONCESSIONAIRE's** Financial Proposal; and
 - 36 4. The **CONCESSIONAIRE'S** Concept / Service Proposal
- 37

1
2 **IN WITNESS WHEREOF**, the parties hereto have executed this Concession
3 Contract as of the day and year first written above.
4

5
6 **WASHINGTON STATE FERRIES**
7 **Washington State Department of Transportation**
8

9
10 BY: _____
11 Mike Thorne
12 Director / CEO
13
14

15
16 **CONCESSIONAIRE'S NAME**
17

18
19 BY: _____
20 Name
21 Title
22
23
24

25
26 Approved as to Form for WSF:
27

28 BY: _____
29 Andrew Scott
30 Assistant Attorney General
31

32 DATE: _____
33
34

STATE OF _____)
)
COUNTY OF _____) ss

On this day personally appeared before me _____, to me known to be the _____, acting on behalf of _____ the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute the said instrument.

GIVEN UNDER my hand and official seal this _____ day of _____, 2003.

NOTARY PUBLIC in and for the State of
_____, residing at _____.

My Commission Expires: _____

STATE OF WASHINGTON)
)
COUNTY OF KING) ss

On this day personally appeared before me **Michael G. Thorne**, to me known to be the Director / CEO of **WASHINGTON STATE FERRIES**, a division of the Washington State Department of Transportation, the agency that executed the within and foregoing instrument, and acknowledged the said instrument to be a free and voluntary act and deed of said agency for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute the said instrument.

GIVEN UNDER my hand and official seal this _____ day of _____, 2003.

NOTARY PUBLIC in and for the State of
Washington, residing at _____.

My Commission Expires: _____

WASHINGTON STATE FERRIES
ON-BOARD FOOD, BEVERAGE AND RETAIL
CONCESSION CONTRACT

CONTRACT EXHIBITS

<u>Exhibit</u>	<u>Title</u>
A	CONCESSIONAIRE's Financial Proposal (incorporated by reference)
B.	CONCESSIONAIRE's Concept / Service Proposal (incorporated by reference)
C	WSF's Request For Proposals (incorporated by reference)